

STORAGE NAME: h0069s1b.cp

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: CS/HB 69

RELATING TO: Failure to Report Crime

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and
Representative Diaz de la Portilla and Others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 1
 - (2) CRIME AND PUNISHMENT YEAS 4 NAYS 1
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Committee Substitute for House Bill 69 requires individuals who know that a crime is being committed which exposes the victim to serious bodily injury to report the crime to a law enforcement officer as soon as it is reasonably practicable. An individual who fails to make such a report would be guilty of a second degree misdemeanor in violation of the new section.

This Committee Substitute further provides that this provision may not be construed to apply to a person who is prosecuted as a principal in the first degree, as an accessory after the fact or for attempting, soliciting, or conspiring to commit an offense.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under common law, failing to report a crime was called "misprision of a felony". This common law crime does not exist in Florida. Holland v. State, 302 So. 2nd 806 (Fla. 2nd DCA 1974).

Failure to Report Sexual Battery

Section 794.027 F.S. makes it a first degree misdemeanor for a person to observe the commission of a sexual battery and fail to report it. The statute provides as follows:

A person who observes the commission of the crime of sexual battery and who:

1. Has reasonable grounds to believe the he or she has observed the commission of a sexual battery.
2. Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer
3. Fails to seek such assistance;
4. Would not be exposed to any threat of physical violence for seeking such assistance;
5. Is not the husband, wife, parent, grandparent, child, brother, or sister of the offender or victim, by consanguinity or affinity and;
6. Is not the victim of such sexual battery

is guilty of a misdemeanor in the first degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

Failure to Report Child Abuse

Section 39.201, F.S. (1998 Supp.) requires any person, including but not limited to any health care professional, school teacher or other school personnel, social worker, day care center worker or law enforcement officer who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected to report such suspicion to the Department of Children and Family Services.

Section 39.205, F.S. (1998 Supp.) provides that any person who is required to report known or suspected child abuse and who knowingly ignores the statutory reporting requirements, is guilty of a second degree misdemeanor. In Barber v. State, 592 So.2d 330 (Fla. 2nd DCA 1992), a foster care counselor failed to report to HRS a phone call that she had received which informed her that the child had been abused. The counselor was convicted under this section and the conviction was affirmed on appeal.

Accessory After the Fact

In Florida, there are three elements that the state must prove in order to convict a person of accessory after the fact:

1. The person charged with accessory after the fact must have knowledge that another person committed a felony. (The state must prove that the other person actually committed the felony.)
2. The person charged with accessory aided or maintained the felony offender with the intent that the felony offender escape arrest or punishment for the crime.
3. Absence of the statutory familial relationship between the person charged with accessory after the fact and the person who committed the felony.

Principal in the First Degree

The standard jury instruction relating to "principals" states:

If the defendant helped another person or persons commit or attempt to commit a crime, the defendant is a principal and must be treated as if he or she had done all the things the other person or persons did if: (1) the defendant had a conscious intent that the criminal act be done, and (2) the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise the other person or persons to actually commit or attempt to commit the crime.

Fla. Standard Jury Instruction 3.01; Section 777.011, F.S.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 69 would make it a second degree misdemeanor for an individual to:

1. know that a crime is being committed
2. which exposes the victim to serious bodily injury and
3. fail to report the crime to a law enforcement officer as soon as is reasonably practicable
4. unless the report could not be made without danger to the person reporting or to another person.

A second degree misdemeanor is punishable by up to sixty days in jail. Section 775.082.

The committee substitute also provides that this section may not be construed to apply to a person either who is prosecuted as a principal in the first degree or an accessory after the fact to an offense, or who is prosecuted for attempting, soliciting, or conspiring to commit an offense, when the prosecuted offense has occurred in the course or the same criminal conduct, transaction or episode as the offense which exposes the victim to serious bodily injury.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 877.31 F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that a person who knows that a crime is being committed to report the crime to a law enforcement officer when the crime exposes the victim to serious bodily injury. Provides that failure to report is a second degree misdemeanor.

Section 2: Provides effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined that CS 69 would have no prison bed impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

This committee substitute would impose a duty on a person who knows that a crime is being committed to report the crime if the crime exposes the victim to a life threatening injury but does not appear to apply to reporting a crime that the person discovers after it is completed. For example, if a person discovered that a friend had previously committed a crime in which the victim had received a life-threatening injury, this committee substitute would not impose on the person an obligation to report the crime. [However, if the person aids or maintains the offender with the intent that the offender escape or arrest for the crime, they could be charged with being an accessory after the fact.]

CS/HB 69 is very similar to the Wisconsin's "Good Samaritan Law" which provides:

- (2) (a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.

* * *

- (d) A person need not comply with this subsection if any of the following apply:

1. Compliance would place him or her in danger.
2. Compliance would interfere with the duties the person owes to others.
3. In the circumstances described under par. (a), assistance is being summoned by others.
4. In the circumstances described under par. (b) or (c), the crime or alleged crime has been reported to an appropriate law enforcement agency by others.

* * *

- (3) If a person renders emergency care for a victim, s. 895.48(1) W.S., applies. Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

Criminal Code 940.32, Wisconsin Statutes.

This Wisconsin provision was upheld in the case of State v. La Plante, 521N.W.2d 448 (Wis. App. 1994) where the court found the defendant's conduct of witnessing an assault on the victim and failing to call for law enforcement for help fell squarely in the prohibited zone of conduct.

Massachusetts, Rhode Island, Ohio, Wisconsin, and Washington have enacted statutes similar to CS/HB 69.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Law Enforcement and Crime Prevention adopted one amendment which provides that an individual has a legal duty to report a crime if the crime exposes the victim to "serious bodily injury" rather than "bodily injury". The bill with this amendment was made a committee substitute.

Representative Spratt offered an amendment at the meeting of the Committee on Crime & Punishment on March 29, 1999. The amendment provides as follows:

- (2) This section may not be construed to apply to a person who is:
 - (a) 1. Prosecuted as a principal in the first degree or an accessory after the fact to an offense; or
 - 2. Prosecuted for attempting, soliciting, or conspiring to commit an offense, when the prosecuted offense has occurred in the course of the same criminal conduct, transaction, or episode as the criminal offense which exposes the victim to serious bodily injury.
 - (b) Related by blood or marriage to the principal or victim of an episode which exposes the victim to serious bodily injury; or
 - (c) A victim of serious bodily injury.

The section providing that the section does not apply to a person prosecuted as a principal in the first degree or an accessory after the fact does not have the language of the other two sections which have language indicating that the reporting requirement does not apply "when the prosecuted offense has occurred in the course of the same criminal conduct, transaction, or episode as the criminal offense which exposes the victim to serious bodily injury."

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

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